



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0189]

RIN 1625-AA00

Safety Zones; National Cherry Festival Air Show and Fireworks Display; West Grand Traverse Bay, Traverse City, MI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish safety zones in the Captain of the Port Sault Sainte Marie Zone. These proposed safety zones are intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone. These temporary safety zones are necessary to protect spectators and vessels from the hazards associated with fireworks displays and aircraft involved in an air show.

DATES: Comments and related materials must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket

number USCG-2013-0189 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email MST1 Thomas Link, Prevention Department, Coast Guard, Sector Sault Sainte Marie, MI, telephone (906) 253-2443, email [thomas.a.link@uscg.mil](mailto:thomas.a.link@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0189), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management

Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0189) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0189) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management

Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### B. Background and Purpose

From June 28 to June 30, 2013, the National Cherry Festival in Traverse City, MI will host an air show over the West Arm of Grand Traverse Bay. At the conclusion of

the National Cherry Festival on July 6, 2013, fireworks will be launched in Grand Traverse Bay. The Captain of the Port, Sault Sainte Marie has determined that the air show and fireworks display pose various potential hazards to the public, including premature detonations, dangerous projectiles, and falling or burning debris.

With these potential hazards in mind, the Captain of the Port Sault Sainte Marie proposes to establish a temporary safety zone pursuant to the authority granted in the Ports and Waterways Safety Act (33 U.S.C. § 1221 et seq.)

#### C. Discussion of Proposed Rule

To safeguard against the dangers posed by the National Cherry Festival air show and fireworks display, the Captain of the Port, Sault Sainte Marie has determined that temporary safety zones are necessary. Thus, the Captain of the Port, Sault Sainte Marie proposes to establish two safety zones for the air show and fireworks display over the West Arm of Grand Traverse Bay.

The proposed safety zone for the air show will be established on June 28, 2013, until June 30, 2013, in a position over West Grand Traverse Bay bounded by a line drawn from 44°46'48" N, 085°38'18" W, then southeast to

44°46'30" N, 085°35'30" W, then southwest to 44°46'00" N, 085°35'48" W, then northwest to 44°46'18" N, 085°38'18" W, then back to the point of origin.

This proposed safety zone will be effective from 12 p.m. on June 28, 2013, until 3 p.m. on June 30, 2013. This proposed safety zone will be enforced daily from 12 p.m. until 3 p.m.

A proposed safety zone will be established on July 6, 2013, for the National Cherry Festival Fireworks display over West Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W.

This proposed safety zone will be effective and enforced from 10 p.m. to 11:30 p.m. on July 6, 2013.

Entry into, transiting, or anchoring within the proposed safety zones is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie, or his on-scene representative. All persons and vessels authorized to enter the proposed safety zones shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The safety zones established by this proposed rule will be relatively small and enforced for a relatively short time. Also, the safety zones are designed to minimize their impacts on navigable waters in that vessels may still transit unrestricted portions of the waterways.



Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port, Sault Sainte Marie. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the enforcement of this proposed rule.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit around West Grand Traverse Bay, Traverse City, Michigan, between 12:30 p.m. and 3 p.m. on June 28 to June 30, 2013, and from 10 p.m. to 11:30 p.m. on July 6, 2013.

These proposed safety zones will not have a significant economic impact on a substantial number of small entities for the reasons discussed in the Regulatory Planning and Review section above.

If you think that your business, organization, or

governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MST1 Thomas Link, Prevention Department, Coast Guard Sector Sault Sainte Marie, MI at (906) 253-2443. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 7. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 9. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 10. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 11. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 12. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 13. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0189 to read as follows:

§ 165.T09-0189 Safety Zone; National Cherry Festival Air Show and Fireworks Display, West Grand Traverse Bay, Traverse City, MI.

(a) National Cherry Festival Fireworks Display; Traverse City, MI:

(1) Location: All U.S. navigable waters and adjacent shoreline of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks

launch site located on a barge in position 44°46'12" N, 085°37'06" W [DATUM: NAD 83].

(2) Effective and Enforcement Period: This regulation will be enforced on July 6, 2013, from 10 p.m. until 11:30 p.m.

(b) National Cherry Festival Air Show; Traverse City, MI:

(1) Location: All U.S. navigable waters of the West Arm of Grand Traverse Bay bounded by a line drawn from 44°46'48" N, 085°38'18" W, then southeast to 44°46'30" N, 085°35'30" W, then southwest to 44°46'00" N, 085°35'48" W, then northwest to 44°46'30" N, 085°38'30" W, then back to the point of origin [DATUM: NAD 83].

(2) Effective and Enforcement period. This regulation will be enforced from 12 p.m. until 3 p.m. daily from June 28, to June 30, 2013.

(i) The Captain of the Port, Sault Sainte Marie may suspend enforcement of the safety zones established under this section.

(ii) the Captain of the Port, Sault Sainte Marie will notify the public of the enforcement and suspension of enforcement of the safety zones established by this section

via any means listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) Definitions. The following definitions apply to this section:

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port, Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

(2) Public vessel means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(d) Regulations.

(1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port, Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing



light or other means, the operator of a vessel shall proceed as directed.

(3) When the safety zones are established by this section and are being enforced, all vessels must obtain permission from the Captain of the Port, Sault Sainte Marie or his or her designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zones shall obey all lawful orders or directions of the Captain of the Port or his or her designated representative. While within the safety zones, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: April 4, 2013

J. C. MCGUINESS  
Captain, U.S. Coast Guard  
Captain of the Port, Sault Sainte Marie

[FR Doc. 2013-09993 Filed 04/30/2013 at 8:45 am;  
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